Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Interlocutory Divorce Decrees.

An amendment of the procedure in divorce cases has been made to N. Y. Code Civ. Proc. § 1774, providing that a judgment annulling a marriage or dissolving it shall be interlocutory only for the space of three months, after which a final judgment shall be entered as a matter of course, unless the court shall otherwise order. The index to the New York Laws of 1902, with a perversity not uncommon in statutory indexes, makes no mention of this act under the head "Divorce," although the amendment of another section of the Code affecting divorces is there indexed. It is a distinct advance in the procedure on this subject toward a proper protection of the interests of the parties to such cases, as well as the interests of the public, to provide for this stay of the entry of final judgment in such actions. It is certainly to be hoped that states which have no such provisions will adopt them.

Advertising for Divorces.

It has been made a misdemeanor in the state of New York, by a new section (148*a*) in the Penal Code, to advertise either by newspaper notice, handbill, pamphlet, circular, card, or notice of any kind for the purpose of getting divorce business. Any offer to procure, or to aid in procuring, any divorce or annulment of marriage, and any offer to engage, appear, or act as attorney or counsel in any suit for such purpose, is within the condemnation of the statute, whether the services are to be performed in this state or elsewhere. The scandals of divorce business ought to be much lessened by a statute of this kind. It is in every way a wholesome act for the good of society. Any person who has a just cause for divorce will have no trouble in finding counsel without the aid of such advertisements, and will doubtless find one who is abler, as well as more scrupulous, than the shyster who wants to advertise for divorce business.

The Reorganized Bankers' Life Association.

Attacks upon the reorganization of the Bankers' Life Association of Minnesota under the new name of the Minnesota Mutual Life Insurance Company were made both in the state and Federal courts by dissatisfied members, on the ground that the reorganization was in violation of their contract. The old plan of assessment insurance was changed to that of an ordinary mutual life insurance company. In both state and Federal courts the attacks were unsuccessful. The decision in the United States circuit court was rendered by Judge Amidon on August 12, 1902, and in his opinion he de-

clares that no contract has been in any way impaired by the reorganization. A correspondent states that great interest has been taken in these decisions, and that a large number of inquiries have been made concerning them by people who are interested in such associations, and some of whom are interested in other litigation pending against another reorganized association. On this account these decisions, though appeals therefrom may perhaps be taken hereafter, are of much importance.

Our Most Dangerous Criminals.

Neither homeless tramps nor desperate thugs constitute the worst element of society. The criminals most dangerous to the public welfare are not in the slums or tenements. They are not hungry, ragged, nor ignorant. They have not been driven into a criminal life by any hard conditions of existence. They are often well born, well educated, and highly intelligent. They frequently possess much refinement and mental culture. It is common to find them gentlemanly in demeanor and unexceptionable in their social relations. The crimes which these men commit are not such as come up in the police court. They are not committed by assault or violent attacks upon individuals, but by secret and insidious attacks upon the very foundations of civilized society.

To corrupt instead of overthrow one's government is not treason, but it is hardly less infamous. A citizen who has reached prosperity and wealth under a free and beneficient government deserves all the execration that the world gives a traitor, if he makes use of his wealth to undermine the integrity of those public servants who constitute the government.

Animosity against rich men as a class has sometimes been propagated by those who are fanatics or worse. The inflexible honesty and high character of a great number of the most prosperous and successful men who have notably succeeded in business life is something of which the nation may well be proud. But side by side with men of this kind in our chambers of commerce and boards of trade are other men of large business reputation and success, greatly respected in social circles, some of them prominent in the church, who are doing more to harm the body politic than all the thieves and murderers in the nation. These are the men whose money finds its way into the pockets of aldermen, legislators, or other public officers to pay for franchises, public contracts, or other official acts by which large returns from the investment are expected. Sweeping assertions of corruption among public officials or among those who obtain public contracts or franchises would be grossly unjust and inexcusable. But it ought to be plainly recognized that corruption in these matters is exceedingly common. It is an undeniable and appalling fact that many a business man of high standing has no hesitation, in private conversation, about admitting the fact that he is obliged to use money illegitimately when he attempts to get such a contract or franchise. Business establishments that are perfectly honorable in their ordinary dealings, and which would bitterly resent any imputation upon their honesty, often take it as a matter of course that when they want a public contract they must buy up some officials to get it. The unspeakably despicable excuse is put forward that this is necessary in order to get the contract. If the name of every prominent citizen who claims to be respectable and honorable, but who has been guilty, directly or indirectly, of bribing a public officer, should be published, the revelation would be astonishing. The extent of this kind of corruption is in large part due to the fact that attempts to punish it are so rarely made, even when the fact of the crime is an open secret, and still more to the fact that such crimes, though well known, do not seriously injure the social standing of the criminal.

By some inexplicable twist of conscience or judgment people often look with much more leniency upon the giver than upon the receiver of a bribe. A boodle alderman becomes the type of degradation. But a leading citizen and financier who furnishes money or stocks to buy the alderman goes about, quite likely, with a consciousness of virtue far superior to that of the alderman, and certainly with much less indication of public condemnation. Yet he is probably the more despicable of the two, because he has sunk from a higher level. To be sure, he has not violated an oath of office by his crime, but as an enlightened and highly intelligent citizen he is the more capable of understanding the depth of his own criminality and its far-reaching tendency to

destroy justice and ruin civilization. Not only is such a man a peculiarly pernicious and pre-eminently dangerous criminal, but when he stands before the public as a representative of the class of honorable business men he is a smug hypocrite, as well as a candidate for state's prison. But citizens who are afraid to show their opinion of him are but little less contemptible than he.

Mistake as to Rule of Survivorship.

The succession to the property of Mr. and Mrs. Fair, who were both killed recently in an automobile accident, has greatly interested some of the public journals. The question as to the presumption of survivorship in such cases being new to some of the newspaper writers, they have discoursed upon it as a "nice" point of law. One of the daily papers has acquired legal erudition enough to discover that this is by no means a rare question, and has proceeded to correct its contemporaries on that point. But, unfortunately, while it has discovered that "there have been many suits based on this question of survival," it proceeds to announce the law to be exactly what it is not. Its declaration is that "the law presumes, in cases of shipwreck and other fatal accidents where a number of people perish together, that the strongest live the longest, that the grown people survive the children, and that the men survive the women." But according to the common-law doctrine established in England and in nearly all the United States, differing from the civil law, there is absolutely no presumption on the subject, and the whole question is one upon which anyone who claims survivorship of a particular person has the burden of establishing that fact. The cases on this subject were carefully collected and analyzed in 51 L. R. A. page 863, where it is shown that there are no authorities contrary to this doctrine in any part of the Union except where the statutes have made a different rule, as in Louisiana and California.

The most interesting part of the subject of the succession of the Fair estates is with respect to the effect of a possible conflict of laws. If the victims of this accident were domiciled in California, the statutory rule in that state will raise a presumption, unless there is evidence or reasonable inference to the contrary, that Mr. Fair survived his wife. This rule, however, would certainly have no force or effect in respect to any real property which either of those parties may have owned in other states. With respect to the distribution of any personal property that either of them may have owned in other jurisdictions there may be much difficulty in determining whether it goes to the representatives of the husband or of the wife; and, since the rule is chiefly one of burden of proof, the defendant may succeed by reason of the failure of the plaintiff to make any proof on the subject. The disposition of courts in many cases to protect the rights of the residents of their own state may also be a factor under some circumstances, as for instance, in case of ancillary administration when the turning over of the assets in the state to a foreign administrator is contested by a resident who asserts some right in them. No such question as this may arise in respect to these estates, but questions of this kind are suggested on which it would be difficult, if not impossible, to find any precedent.

A New Statute against Anarchy.

The legislature of New York, by act of April 3, 1902, has added to the Penal Code, as §§ 468*a*–468*e*, some important provisions on the subject of criminal anarchy, which is defined as "the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means." The advocacy of such doctrine either by word of mouth or writing is declared a felony. Such advocacy also includes the open, wilful, and deliberate justification of the assassination, unlawful killing, or assault on any officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime with intent to teach, spread, or advocate the propriety of the doctrines of criminal anarchy. It also includes provisions as to the liability of editors, publishers, etc., and of persons assembling to advocate criminal anarchy or permitting their premises to be used for such assemblages.

It is gratifying to have this attempt made to prevent open and bold advocacy of crime

by anarchists. The statute carefully guards the right of free speech by limiting the definition of the crime to the advocacy of unlawful means for the overthrow of government, so that the free discussion and advocacy of a purely philosophic theory that human society ought to have no organized government is still permitted. The crime of justifying assassination or the unlawful killing or assault upon any officer is also restricted to the justification of such violence when this is committed because of his official character. It therefore does not cover the case of criminal violence against any public officer which is committed against him merely as an individual and without regard to his official character.

This statute embodies, in substance, the provisions suggested in these columns one year ago, so far as it covers assassination or assaults upon officers of our own government; but it goes beyond those suggestions in making the statute apply to the advocacy or encouragement of such assassination or assaults upon officers of foreign governments. There is nothing contrary to justice or to the principles of a free government in this statute, and it is to be hoped that something equivalent to it, and reaching the same end, may be adopted in every state of the Union.

Seeking for a Just Rule of Assessments.

Officials of several cities have recently been quoted in favor of some better rule for assessing the cost of public improvements. Different remedies for the present unsatisfactory methods have been suggested. But there is one clear and certain principle that justice requires to be kept in view which officials do not always recognize. That is the very foundation rule of all special assessments requiring them to be based upon special benefits. While this is concededly the only possible foundation for just assessments, it is a peculiar fact that the laws very generally disregard it when providing the method of assessment. The common method of starting with the assumption that the property benefited at all must be benefited to an amount equal to the total cost of the improvement is so manifest and so ludicrous a *non sequitur* as to deserve a place in the humors of the law. But it has its tragic side. While in possibly the great majority of instances the rule works fairly well, there are in the aggregate a large number of instances in which the most rank injustice is perpetrated under the form of law. One instance in which a man having a considerable tract of land worth many thousand dollars on the border of a city was financially ruined by an assessment for what the law termed an improvement to his property is typical of many others. Assessments for so-called improvements to property, when made to an amount greater than the total value of the property after it is improved, constitute a wrong which cannot be permanently tolerated by any just government. The only reason they are tolerated at all is that the victims are few and the beneficiaries of the wrong are many. If that is sufficient ground for permanently preserving a principle of confiscation of private property for the benefit of other people, then there may be no remedy. But, if a question is never settled until it is settled right, this question is still open.

A rule of assessment as clear as the principle on which it is based is perfectly simple, and yet seems to be ignored in most places. That is to assess all private property specially benefited, not by any arbitrary division of the total cost, but by a simple appraisal of the amount of benefits. It is just as easy to appraise the added value to a piece of property by virtue of an improvement and then determine the amount to be assessed thereon as it is to appraise the total value of the property, which is annually done by assessors for general taxation. The adoption of this rule would make it necessary for the public to pay out of its general fund any deficiency of the cost that might remain after the property benefited had paid the full amount of benefits, and there is no possible reason why this should not be done. If it is in reality a public improvement, as it purports to be, then it is the business of the public to pay any part of the cost above the amount of special benefits to particular property. If it is not worth that to the public, the improvement should not be made. Ordinarily the special benefits may be quite sufficient to pay the whole cost. If so, the adoption of this simple and just method does not impose on the public any burden. The only question is whether, in case the special benefits

do not amount to the total cost, the deficiency is to be unjustly saddled upon certain chosen victims, or whether it shall be borne by the public which receives the benefits. The justice of the simple method of directly assessing the special benefits to each piece of property benefited and paying any part of the cost remaining out of the public funds is so clear that no amount of argument can make it clearer. The only argument against it is that this plan might cost the public something which it does not now have to pay, but this expense can be avoided only by charging it upon individuals unjustly and dishonestly.

Index to New Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 53, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Bonds.

The sureties on a constable's bond are held, in Feller v. Gates (Or.) 56 L. R. A. 630, not to be liable for the return of money taken by him from an execution defendant to stay the execution and give time to perfect an appeal, under a promise to return it in case the appeal is perfected, since such act is not within the constable's authority.

Carriers.

A stipulation in a pass releasing the carrier from liability for negligent injuries to one riding thereon is held, in Payne v. Terre Haute & I. R. Co. (Ind.) 56 L. R. A. 472, to be valid.

Injury to a passenger who, in attempting to have her baggage checked, is knocked down in a passageway leading from the ticket office or waiting room to the baggage room, by cabmen who, in sport, are scuffling on the passageway, is held, in Exton v. Central Railroad Company of New Jersey (N. J. Err. & App.) 56 L. R. A. 508, to render the railroad company liable, where the occurrence of similar conduct on the part of the cabmen to the annoyance and injury of passengers was known, or should have been known, to the railroad company.

A railroad company *via* whose compress cotton is shipped on a through bill of lading, a manifest of which accompanies the property consigned to "order notify" consignor, is held, in Southern R. Co. v. Atlanta National Bank (C. C. A. 5th C.) 56 L. R. A. 546, to be liable to the holder of the bill of lading for the loss thereby inflicted on him, in case the cotton is delivered from the compress to a third person under direction of the consignor.

A railroad company which ejects from its cars, at a station where his ticket expires, a drunken passenger acting in a boisterous manner, using no more force than is reasonably necessary, is held, in Chesapeake & O. R. Co. v. Saulsberry (Ky.) 56 L. R. A. 580, not to be liable for any injury which may result to him from his effort to pursue and re-enter the train.

Conflict of Laws.

See also CONSTITUTIONAL LAW.

If, under the statutes of a state where a contract for transmission of a cipher telegram is made, a provision in the contract is valid which exempts the company from liability for mistakes unless a small additional fee is paid to insure accuracy, it is held, in Shaw v. Postal Teleg. Cable Co. (Miss.) 56 L. R. A. 486, that liability for mistakes cannot be enforced in another state in the absence of such payment, although by its laws the provision would be invalid.

Constitutional Law.

See also CRIMINAL LAW.

A statute attempting to prevent a railroad company whose road extends into the state from another state in which one of the citizens of the former state is injured while in the employ of the railroad company, from setting up the decisions of the latter state in defense of an action brought in the former state to enforce its liability for the injury, is held, in Baltimore & O. S. W. R. Co. v. Read (Ind.) 56 L. R. A. 468, to be void as an unconstitutional confiscation of its property rights.

One who was tried and convicted in a police court, without a jury, of keeping a bawdy house in violation of a city ordinance, and who, on attempting to appeal from the conviction, was required to give a bond with approved surety, to secure her appearance in the district court, which she declined to do, tendering one signed by herself alone, which was refused, is held, in *Re* Kinsel (Kan.) 56 L. R. A. 475, not to be unconstitutionally deprived of the right to jury trial, since the constitutional guaranty does not extend to prosecutions for the infraction of ordinances and local regulations passed under the police power.

Requiring a horseshoer to practise the business of horseshoeing for four years, and submit to an examination by a board of examiners, and pay a license fee for the privilege of exercising his calling, is held, in Bessette v. People (Ill.) 56 L. R. A. 558, not to be within the police power of the state.

The exemption of persons who have served in the Union Army or Navy from the operation of the statute requiring all persons peddling goods outside of the city or town to pay a license tax, was held, in State v. Garbroski (Iowa) 56 L. R. A. 570, to render the statute void as in violation of the constitutional provision that all laws of a general nature shall have a uniform operation, and that no privileges or immunities shall be granted to any citizen, or class of citizens, which shall not equally belong, upon the same terms, to all citizens.

Contempt.

See RECEIVERS.

Contracts.

See also COURTS.

A contract by one permitted to place a building on a railroad right of way, that the company shall be released from all liability for injury to the building by fire from locomotives, is held, in Greenwich Ins. Co. v. Louisville & N. R. Co. (Ky.) 56 L. R. A. 477, to be valid, and to release the company from liability, either to the owner of the building or its insurer, for injury by fire set out, even through negligence, unless it is wilful or wanton.

A contract by which the next of kin of one about to be employed by a railroad company releases the company from liability to him for damages resulting from negligent injuries to the employee is held, in Tarbell v. Rutland R. Co. (Vt.) 56 L. R. A. 656, to be void as contrary to public policy, where a statute provides for such liability.

The rule that, so long as an illegal contract is executory, the courts will aid a recovery back of whatever has been paid thereon, is held, in Ullman v. St. Louis Fair Asso. (Mo.) 56 L. R. A. 606, not to apply to a partly executed contract for the exclusive right of bookmaking at a race track at a particular meeting; and it is held that the contracting party cannot, after enjoying the benefit of the contract for a number of days, abandon it and recover back money paid in excess of the *pro rata* amount due for the time which has elapsed.

Corporations.

A corporation which permits an executor to transfer on the books of the corporation stock of his testator to a legatee is held, in Wooten v. Wilmington & W. R. Co. (N. C.) 56 L. R. A. 615, to be charged with knowledge of the contents of the will, and bound to see that any trust provisions of the will are carried out.

Courts.

The affairs of a partnership organized to carry on the business of bookmaking are held, in Central Trust & Safe Deposit Co. v. Respass (Ky.) 56 L. R. A. 479, not to be capable of settlement by the courts, even to the extent of dividing profits realized from complete transactions.

Covenants.

A covenant of general warranty of title, in a deed of marked trees described as standing on certain land on which a lien is given to secure the warranty, though some of the trees are, in fact, on other land, is held, in Asher Lumber Co. v. Cornett (Ky.) 56 L. R. A. 672, not to be a covenant running with the trees, on which the grantor will be liable to a subsequent purchaser by deed from the grantee.

Criminal Law.

The lapse of more than sixty days after a mistrial, without placing the case on the calendar for retrial, or good cause shown for the failure to do so, the delay not being caused by or with the consent of the accused, is held, in *Re* Begerow (Cal.) 56 L. R. A. 513, to entitle him to discharge under habeas corpus, where the Constitution guarantees him a speedy trial, and the statute provides that the prosecution shall be dis-

missed if, in the absence of good cause shown, the accused is not brought to trial within sixty days after filing the indictment, and the trial is not postponed upon his application.

Statutory provisions permitting one accused of felony, who has been released from custody because not brought to trial within sixty days as required by the statute, to be rearrested for the same offense, are held, in *Re* Begerow (Cal.) 56 L. R. A. 528, not to violate constitutional provisions guaranteeing accused persons the right to a speedy and public trial.

Damages.

Damages for mere mental suffering caused by failure to promptly deliver a telegram are held, in Connelly *v.* Western Union Teleg. Co. (Va.) 56 L. R. A. 663, not to be recoverable either at common law or under statutes imposing penalties for failure to promptly transmit and deliver telegrams, authorizing the recovery of damages sustained by reason of the violation of the statute, and making telegraph companies liable for special damages occasioned in transmitting or delivering despatches, in determining the quantum of which, grief and mental anguish may be considered.

Druggists.

See NEGLIGENCE.

Evidence.

Dying declarations of a woman whom defendant is charged with killing by means of an abortion are held, in Worthington *v.* State (Md.) 56 L. R. A. 353, to be admissible in evidence where they were accompanied by constant affirmation of expectancy of death, and begging the doctor to save her, as she was dying, although he held out hope of recovery.

An instrument prepared by an injured person in full possession of his mental faculties and in the confident hope of recovery, to be signed as a dying declaration in the event of subsequent conviction of fatal termination of the injury, is held, in Harper *v.* State (Miss.) 56 L. R. A. 372, not to be admissible in evidence as a dying declaration, although executed under conviction of death.

False Imprisonment.

The one making the affidavit for a warrant under which an arrest is made is held, in Whaley *v.* Lawton (S. C.) 56 L. R. A. 649, not to be liable to an action for false imprisonment, although the facts stated are held not to have constituted a crime which would authorize an arrest.

Fixtures.

Machinery purchased for use in a permanent building under a contract that it shall remain the property of the seller, or on which, after it is placed in the building, a chattel mortgage is given by the purchaser to the seller, is held, in Anderson *v.* Creamery Package Mfg. Co. (Idaho) 56 L. R. A. 554, not to be subject to the lien of a real-estate mortgage of date prior to the purchase of the machinery; and it is held that the mortgagee has a right of action to foreclose his chattel mortgage.

Gift.

A finding of gift of an insurance policy, including delivery sufficient to make it effective, is held, in Lord *v.* New York Life Ins. Co. (Tex.) 56 L. R. A. 596, to be supported by declarations of the insured that the policy is the donee's, although it is found among his papers, at his banker's, after his death.

Habeas Corpus.

See CRIMINAL LAW.

Ice.

See WATERS.

Injunction.

The replacing of hitching posts which have been removed by the municipal authorities as public nuisances is held, in Mer-

cer County v. Harrodsburg (Ky.) 56 L. R. A. 583, to be properly enjoined where, although not nuisances in themselves, their manner of use makes them such.

Insurance.

Mere knowledge by the donee of mortgaged personalty that the mortgagor has agreed, but failed, to insure it for the benefit of the mortgagee, is held in Shadgett v. Phillips & Crew Co. (Ala.) 56 L. R. A. 461, not to entitle the mortgagee to the benefit of insurance procured by the donee for his own benefit.

A husband having by statute the sole right of control of community property is held, in Martin v. McAllister (Tex.) 56 L. R. A. 585, to be entitled to appropriate community funds, without the consent of his wife, to the procurement of insurance upon her life, the proceeds of which, in case of her death, will belong to him in his individual right.

A condition in a life insurance policy that if, within three years from the date of the policy, the insured should die by suicide, sane or insane, the liability of the company should be limited to the amount of the premiums paid, is held, in Scherar v. Prudential Ins. Co. (Neb.) 56 L. R. A. 611, to be valid.

Judgment.

A suit which is in the nature of a creditors' bill, and in which the plaintiff's right to relief depends entirely upon the existence of a judgment, and which is wholly ancillary to the judgment and in aid of the execution issued thereon for the purpose of reaching certain choses in action of the judgment debtor, and having the proceeds thereof applied in satisfaction of the plaintiff's judgment, is held, in Miller v. Melone (Okla.) 56 L. R. A. 620, to fall, if, pending such action, the judgment becomes dormant by lapse of time.

A decree rendered after the death of one of the defendants, although on the same day, is held, in *Ex parte* Massie (Ala.) 56 L. R. A. 671, not to be valid, the rule by which fractions of a day are not regarded not applying in such case.

Jury.

See CRIMINAL LAW.

Landlord and Tenant.

An assignee of a lease, who, as part of the consideration of the assignment, assumes all the obligations and liabilities arising under the lease, is held, in Springer v. De Wolf (Ill.) 56 L. R. A. 465, not to be able to absolve himself from liability to the lessor for rent by assigning his interest to a third person.

Master and Servant.

See MUNICIPAL CORPORATIONS; NEGLIGENCE.

Mortgages.

See FIXTURES; INSURANCE.

Municipal Corporations.

The death of a city employee from smallpox contracted in tearing down a smallpox hospital, of the danger from which he receives no warning, is held, in Nicholson v. Detroit (Mich.) 56 L. R. A. 601, not to render the city liable, where the work is done through a board the duties of which are statutory, and which is required to provide smallpox hospitals in case of emergency, since the city's act is a governmental function.

Negligence.

For a druggist to fill an order for calomel tablets with morphine, and place them in a box labeled "calomel," without giving notice of the fact, is held, in Smith v. Middleton (Ky.) 56 L. R. A. 484, to be gross negligence which will render him liable for punitive damages in case injury results therefrom.

A railroad company which undertakes to care for and treat one of its employees suffering from smallpox, and negligently permits him to escape, is held, in Missouri, K. & T. R. Co. v. Wood (Tex.) 56 L. R. A. 592, to be liable to persons to whom he com-

municates the disease while he is at liberty.

Nuisance.

See INJUNCTION.

Pardons.

A statute providing for a maximum and minimum sentence of imprisonment for convicts, and giving a board power to grant paroles after the expiration of the minimum time, is held, in *Re* Conditional Discharge of Convicts (Vt.) 56 L. R. A. 658, to conflict with the governor's pardoning power.

Peddlers.

See CONSTITUTIONAL LAW.

Police Power.

See CONSTITUTIONAL LAW.

Principal and Agent.

Authority given to an agent to indorse for deposit checks received for his principal is held, in Fay *v.* Slaughter (Ill.) 56 L. R. A. 564, not to bind the principal to restore the value of checks received by the agent from a third person for stock of the principal, upon which he had forged transfers after he had indorsed the checks for deposit in the principal's account, and checked out their amount and applied it to his own use.

Principal and Surety.

See BONDS.

Railroads.

Signals at a private crossing are held, in Louisville & N. R. Co. *v.* Bodine (Ky.) 56 L. R. A. 506, to be required for a special train running at high speed, when the crossing is peculiarly dangerous because a view of the approaching train is cut off until it is almost at the crossing, and the crossing is used, not only by the landowner, but by the public, and it has been customary for trains to give signals at that place.

Before the public can be said to have acquired an implied license to cross the right of way and tracks of a railroad company at a place other than a public crossing, so that the company, in the operation of its tracks, is bound to anticipate foot passengers at such place, it is held, in Atchison, T. & S. F. R. Co. *v.* Potter (Kan.) 56 L. R. A. 575, that the path must be so well defined as to attract public attention, and the use must be continuous and for such a length of time that the company knows, or, in the exercise of ordinary care, should know, that the public is thus using its right of way.

Receivers.

In a proceeding to require a receiver to show cause why he should not be punished for contempt for permitting the carrying away of property committed to his care, an affidavit is held, in Oster *v.* People (Ill.) 56 L. R. A. 462, not to be necessary, where the facts have all been brought to the attention of the court by testimony taken under a petition, filed in the cause in which he was appointed, to have the property restored.

The mere fact that the receivers of a hospital are authorized to operate it is held, in United States Investment Corporation *v.* Portland Hospital (Or.) 56 L. R. A. 627, not to give preference, *ipso facto*, to any debts they may contract in so doing, over prior liens on the property, where they are not appointed at the request of the prior lien holders.

Statutes.

See CONSTITUTIONAL LAW.

Taxes.

A statute permitting the assessment of property to the one to whom it was last assessed, in the absence of notice of change of ownership, is held, in Morrill *v.* Lovett (Me.) 56 L. R. A. 634, not to apply in case the change of ownership arises from the death of the owner to whom the taxes were assessed, where the general policy of the tax legislation is to create a personal lia-

bility, as well as a lien on the property, and another statute provides for the taxation of decedents' estates.

Telegrams.

See CONFLICT OF LAWS; DAMAGES.

Timber.

See COVENANTS.

Trial.

A sealed verdict of guilty on certain counts of an indictment, without any finding as to the other counts, is held, in Hechter *v.* State (Md.) 56 L. R. A. 457, not to be invalidated by permitting the jury, after the verdict is opened, but before it is recorded, to amend it by adding not guilty as to the others.

Waters.

The owner of land on a public navigable river, who has obtained a grant from the state of a portion of the river bed in front of his land, but who has made no improvements thereon for commercial purposes, is held, in Slingerland *v.* International Contracting Co. (N. Y.) 56 L. R. A. 494, to have no right of action against a contractor for the dredging of the river, who, with the consent of the state and Federal governments, places the dredgings behind dykes on state land adjoining his, although the result is that they are washed onto his submerged land, impairing his access to navigable water, and interfering with his fishing and gathering ice therefrom.

It is held in *Re* New York (N. Y.) 56 L. R. A. 500, that the rights of the owner of land bordering on tidewater cannot be abridged by the construction of a speedway upon the tideway along his water front, under authority of the state, without making compensation to him for the injury caused thereby, where the use of the speedway is limited to the pursuit of pleasure in driving, riding, or walking, and all forms of commercial traffic are rigidly excluded therefrom.

Marking, staking, or cleaning ice not yet of sufficient thickness for harvesting is held, in Becker *v.* Hall (Iowa) 56 L. R. A. 573, not to amount to a legal appropriation of it.

Wills.

At common law it is held, in Billington *v.* Jones (Tenn.) 56 L. R. A. 654, that a will is revoked by writing upon it a signed pencil declaration, "This will is null and void," stating to witnesses that it is killed, and filing it away, where it remains more than twelve years until testator's death, and is referred to only once, and then merely by stating that testator would never have any peace about it.

New Books.

"Village Laws of the State of New York." By Becker & Howe. 3d Ed. (Williamson Law Book Co., Rochester, N. Y.). 1 Vol. $2.50.

"Civil Procedure Reports." Containing Cases under the Code of Civil Procedure and the General Civil Practice of the State of New York. Reported with Notes by Percival S. Menken. (S. S. Peloubet, New York.) Vol. 32. $3.

"Personal Injuries and, Incidentally, Damage to Property Caused by the Running of Railway Trains." By John L. Hopkins. (Foote & Davies Co., Atlanta, Ga.) 1 Vol. $8.

Recent Articles in Law Journals and Reviews.

"The Miscalled 'Right of Privacy.'"—10 American Lawyer, 293.

"A Partner's Right to an Accounting after an Assignment of His Claim."—10 American Lawyer, 292.

"The Vesting of a Devised Estate as Dependent upon Death of Beneficiary."—10 American Lawyer, 291.

"Right of Privacy and Equity Relief."—55 Central Law Journal, 123.

"The Right to Practise Law."—17 Chicago Law Journal, 517.

"Right to Recover on a Mortgage which Has Been Transferred by the Mortgagee to,

or Executed in Favor of, a Resident of Another State for the Purpose of Evading Taxation."—55 Central Law Journal, 121.

"Exemplary Damages in Actions against Corporations."—55 Central Law Journal, 105.

"Admissibility of Life or Mortality Tables in Evidence in Cases of Death or Permanent Injury for the Purpose of Estimating the Amount of Damages."—55 Central Law Journal, 101.

"Excessive Combination and Its Remedy."—6 Law Notes, 101.

"Anti-Monopoly Legislation from the Days of Elizabeth to the Anti-Trust Act of 1890."—55 Central Law Journal, 144.

"Criminal and Civil Liability for Assault in Kissing or Embracing a Female without Her Consent."—55 Central Law Journal, 141.

"The Suicide Clause in Life Insurance Policies."—64 Albany Law Journal, 279.

"Should Expert Witnesses be 'Retained?'"—64 Albany Law Journal, 272.

"Procedure."—64 Albany Law Journal, 267.

"Injunctions against Strikes or Boycotts."—55 Central Law Journal, 163.

"Power of the Legislature to Fix the Price of Coal Mined."—55 Central Law Journal, 161.

"Scope of Term 'Homestead.'"—55 Central Law Journal, 184.

"Effect of the Anticipatory Breach of an Executory Contract of Sale upon the Passing of the Title and the Right of the Vendor to Sue for the Purchase Price."—55 Central Law Journal, 181.

"Some Difficulties of Pan-American Arbitration."—17 Chicago Law Journal, 567, 584.

The Humorous Side.

A SHORT-FORM DIVORCE.—A combination notary and justice of the peace in Tennessee has lately perpetrated the following shorter form procedure in divorce cases, and for his official services in the particular case received compensation of $2.50:

"To all whom it may concern

"We, David E. P—— and wife Ophelia P—— have this day by mutual consent agreed to separate as man and wife, and that Mrs. Ophelia P—— be known as Ophelia C——.

Now for and in consideration of one half of the proceeds of our farm and personalty property, I, Ophelia P—— have this day by mutual consent give David E. P—— a deverse from me.

This instrument of writing takes effect from date.

August 4th, 1902.

"Ophelia E. P——.

"State of Tennessee, ——— County.

"Personally appeared before me L. D. B——, a Notary Public in and for said County & State, the within Mrs. Ophelia wife of the David E. P—— having personally appeared before me, privately and apart from her husband, the said Mrs. Ophelia P—— acknowledged the execution of said paper to have been done by her freely, voluntarily and understandingly, without compulsion or constraint from her husband, and for the purposes therein contained.

"Witness my hand and official seal at K———, Tennessee, this 5 day of August 1902.

"L. D. B——, Notary Public, (Seal,)"

FROM WINGS TO FODDER.—A brief for the state in an early Nebraska case indulges in the following prairie flowers of fancy:

"Plaintiffs in error are afraid that the honor and dignity of the state will suffer, and they invoke for the claimants broad principles of natural equity, and the claim that neither the laws governing courts nor the Constitution apply to them. The logical sequence is this—that persons who hold claims against the state are a favored class, who can alone make wings of 'justice and right' to fly to that mystic region above and beyond the trammels of law, and where such unjust things as contracts and written constitutions do not exist; but where for them a straight and narrow pathway leads to the treasury, whose doors, without stint or delay, turn softly on golden hinges to admit them. Yet if I do not very much mistake this court, 'these wings' will unfeather in their flight, and claimants against the state must fall to a common level with all other litigants, and stand up to the rack where is fed that good old fodder of 'justice and right' as administered by our courts."